

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RENE SHERIDAN,

Plaintiff and Appellant,

v.

WILLIAM T. RINTALA et al.,

Defendants and Respondents.

B199979

(Los Angeles County  
Super. Ct. No. BC352666)

APPEAL from an order of dismissal of the Superior Court for the County of Los Angeles. Affirmed.

Randel L. Ledesma and Matthew Fortado for Plaintiff and Appellant.

Baker, Keener & Nhra, Robert C. Baker, Phillip A. Baker and James D. Hepworth; Rintala, Smoot, Jaenicke & Rees, William T. Rintala and J. Larson Jaenicke, for Defendants and Respondents.

---

## **SUMMARY**

The trial court did not abuse its discretion when it sustained, without leave to amend, a law firm's demurrer to a second amended complaint for legal malpractice. The client, who replaced the law firm as her counsel several months before the trial of a lawsuit in which she suffered an adverse jury verdict, did not allege facts demonstrating any causal connection between the law firm's alleged acts of malpractice and the adverse verdict.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Rene Sheridan filed a complaint for malpractice against the law firm of Rintala, Smoot, Jaenicke & Rees and three of its attorneys (collectively, Rintala). Rintala represented Sheridan during the initial stages of a lawsuit filed against her by Sabrina LaBow. The substance of LaBow's lawsuit was that she and Sheridan were engaged in a joint venture for the development of projects in the entertainment industry, and Sheridan breached an agreement to split equally the revenues generated by one of the projects (the *Jailhouse Rock* project). Some four and a half months before trial of the case, Sheridan replaced Rintala as her counsel. The trial resulted in a jury verdict of \$100,000 against Sheridan on LaBow's claim of breach of fiduciary duty. The facts of the case are described in more detail our unpublished opinion affirming the judgment. (*LaBow v. The Red Diamond Company* (May 29, 2008, B188562 [nonpub. opn.].))

Sheridan filed a complaint for legal malpractice against Rintala. She alleged that her position in the LaBow lawsuit was that no agreement whatsoever existed that she would work with LaBow on any project, present or future. Sheridan alleged that, in a motion Rintala filed for summary judgment in the LaBow lawsuit, Rintala negligently conceded that LaBow, Sheridan, and Sheridan's company (The Red Diamond Company) agreed to work together to acquire, develop, produce and secure the distribution or sale of projects in the entertainment industry. As a result of this negligent admission, summary judgment was denied, and "[i]n addition, the jury found Sheridan and Red Diamond liable to LaBow."

Rintala demurred, pointing out that the summary judgment papers themselves refuted Sheridan's claim, showing that (1) Sheridan denied the existence of any agreement, and (2) for purposes of the summary judgment motion only, Sheridan would not dispute LaBow's claim of an agreement, but expressly reserved her (Sheridan's) right to show at trial that her only "promise" to LaBow was to assist her in identifying projects in which LaBow's father or other friends might invest.<sup>1</sup> Rintala also pointed out that Sheridan's complaint did not allege the requisite element of causation. At the hearing on Rintala's demurrer, Sheridan "submit[ted] on the tentative," in which the trial court sustained the demurrer with leave to amend.

Sheridan filed a first amended complaint. This time, in addition to the allegations about the "admission" in the summary judgment motion, Sheridan alleged that (1) Rintala required her to reinstate The Red Diamond Company, a defunct corporation with no assets, as an active corporation in good standing, and this was expensive, time-consuming, and immaterial to her defense of LaBow's claims. She also alleged that (2) she asked Rintala to file a cross-complaint against LaBow "for involving her [Sheridan] in a baseless and frivolous lawsuit," and Rintala refused to do so "without justification and as part of their plan to weaken [Sheridan's] defense of the LaBow claim." The lack of a cross-complaint and Rintala's other actions "made it likely that substantial damages would be awarded against [Sheridan]. In essence, [the Rintala defendants] changed sides and were secretly working for LaBow . . . ."<sup>2</sup>

Rintala demurred again, contending that the two added acts of malpractice consisted of advice that was correct as a matter of law, and that facts showing causation

---

<sup>1</sup> In the summary judgment motion, Rintala argued no enforceable agreement existed, as the agreement LaBow asserted was merely an agreement to agree.

<sup>2</sup> Similarly, in again alleging her claims about Rintala's "admission" in the summary judgment motion, Sheridan alleged that the "admission was made as part of the plan of [Rintala] to change sides and foster the position of LaBow against [Sheridan]."

had not and could not be alleged.<sup>3</sup> The trial court again sustained the demurrer with leave to amend, observing to counsel for Sheridan, “Don’t come up with the same facts,” and “Your leave to amend does not include making the same factual allegation because that’s [a loser] from the get [go].”

Sheridan then filed her second amended complaint. In addition to her previous allegations, she alleged “numerous acts of willful malpractice, which suggest that [Rintala was] not really working for [Sheridan] . . . .” These acts included failure to depose Sheridan’s many colleagues who would have testified in her favor; failure to ask LaBow “critical questions” at her deposition, and failure to file a motion to compel responses after LaBow refused to answer critical questions; failure to file a cross complaint “against LaBow and her father, Ron LaBow, who was not judgment-proof”; losing documents; and failing to oppose a motion in limine and a motion for a protective order preventing Sheridan from questioning LaBow’s father, “which hurt [Sheridan] at the trial . . . .”<sup>4</sup> She also alleged that the attorneys she hired after firing Rintala “advised [her] that it was impossible to correct [Rintala’s] acts of malpractice before trial . . . .”

---

<sup>3</sup> Rintala pointed out that if Red Diamond had not been reinstated, LaBow could have obtained a default judgment against it, which might have been enforceable against Sheridan personally on an alter ego theory without regard to the merits of her defense. And a cross-complaint against LaBow “for involving [Sheridan] in a baseless and frivolous lawsuit” would constitute a malicious prosecution claim, which could not be stated in the absence of the element of termination of the lawsuit in Sheridan’s favor.

<sup>4</sup> The other acts of malpractice alleged were: failure “to compel LaBow to produce any evidence of an existing agreement, oral or written at the inception of her lawsuit”; failure to file a demurrer on the ground of LaBow’s failure to name an indispensable party; filing, in support of the summary judgment motion, “thousands of pages” of exhibits “submitted by LaBow to confuse the issues”; failing to file, as an exhibit to the summary judgment motion, an agreement on the *Jailhouse Rock* production which was submitted to LaBow (but not signed by her), which stated that it was the only agreement on the matter; stipulating that Sheridan was an alter ego of the Red Diamond Company; and excessive billing “for fees for these acts of malpractice . . . .”

Rintala again demurred, and Sheridan filed opposition papers. Sheridan's attorney did not appear at the hearing. The trial court sustained the demurrer without leave to amend for failure to state facts sufficient to constitute a valid cause of action. The court's tentative ruling reiterated its previous conclusions, observing that (1) facts that are undisputed for purposes of summary judgment do not constitute judicial admissions; (2) counsel's advice to revive The Red Diamond Company was necessary to avoid default proceedings; and (3) the jury verdict against Sheridan showed that a cross-complaint against LaBow for filing a frivolous lawsuit (malicious prosecution) could not have succeeded. Further, Sheridan's numerous new allegations did not "factually demonstrate any causal connection between [Rintala's] alleged conduct and [Sheridan's] injury."

Sheridan moved for a new trial, arguing the court made findings of fact when it sustained the demurrer. The court denied the motion, and an order of dismissal was entered on April 17, 2007. This appeal followed.

### **DISCUSSION**

Sheridan has apparently, and appropriately, abandoned her claims that the so-called "admission" in the summary judgment motion, Rintala's advice on reinstating The Red Diamond Company, and Rintala's refusal to file a cross-complaint against LaBow for bringing a frivolous lawsuit constituted malpractice. Instead, she identifies five of the additional acts alleged in her second amended complaint as acts of malpractice, and contends she has stated a cause of action (or could do so if given another opportunity to amend). She argues that the trial court improperly held her to a "heightened standard of pleading that is not supportable under the law." We disagree.

We note first the legal standards. In reviewing the legal sufficiency of a complaint, we accept as true all material facts properly pleaded; we do not accept as true contentions, deductions or conclusions of fact or law. We also consider facts that may be judicially noticed, and if those facts are inconsistent with the complaint's allegations, we reject the allegations. We determine whether the complaint states facts sufficient to constitute a cause of action and, if not, whether there is a reasonable possibility that the defect can be cured by amendment. The plaintiff has the burden of proving a defect can

be cured. (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1040-1041.) In a litigation malpractice action, the plaintiff must establish, among other elements, that but for the alleged negligence of the defendant attorney, the plaintiff would have obtained a more favorable judgment or settlement in the action in which the malpractice allegedly occurred. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241.) Thus, to state a claim for legal malpractice, Sheridan was required to plead facts that, if believed, would establish a proximate causal connection between the negligent conduct and the resulting injury. (See *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.)

In this case, the trial court properly concluded that Sheridan's second amended complaint did not allege facts demonstrating any causal connection between Rintala's conduct and the adverse verdict in the LaBow lawsuit. This is so as to each of the five alleged acts of malpractice which Sheridan asserts on appeal stated a cause of action. Thus:

- Sheridan contends Rintala's acts of malpractice included failure to propound and compel discovery. Specifically:
  - Sheridan alleged Rintala failed to depose Sheridan's many colleagues "actually involved in [Sheridan's] projects, who would have testified in [Sheridan's] favor" and "who knew LaBow had nothing to do with these projects," including *Jailhouse Rock*. But, we cannot see how failure to depose friendly witnesses could be malpractice, unless the witnesses were unavailable for trial. Sheridan did not allege any of Sheridan's colleagues were unavailable at the time of trial, nor did she allege any facts showing that her new counsel, in the four and a half months before trial, could not have obtained any desired testimony. Consequently, Sheridan did not allege the necessary causal connection between Rintala's failure to depose the colleagues identified and the adverse jury verdict.
  - Sheridan alleged that, when Rintala deposed LaBow, Rintala "failed to ask her critical questions," and "failed to file a motion to compel responses after LaBow had refused to answer critical questions in the deposition."

But Sheridan does not allege the nature of the “critical questions” Rintala failed to ask; does not allege what critical questions LaBow refused to answer; and does not allege any facts showing how or why the failure to obtain answers to these (unidentified) questions operated to affect the verdict against her at the trial. The trial judge correctly concluded that these allegations were conclusory allegations that may be disregarded on demurrer. (*Blatty v. New York Times Co.*, *supra*, 42 Cal.3d at p. 1040 [courts do not accept as true contentions, deductions or conclusions of fact or law].)

- Sheridan alleged that Rintala “did not oppose a Motion for Protective Order and a Motion in Limine preventing [Sheridan] from questioning LaBow’s father, Ron LaBow . . . .” As the trial court pointed out, there were no factual allegations showing how opposing these motions would have led to a more favorable result at trial. Moreover, as the trial court also pointed out, it would have been improper to file motions in limine at the time Rintala was substituted out of the case (4 1/2 months before trial), and in addition the case docket showed that no motion for a protective order was filed during the time Rintala represented Sheridan, so there was no protective order to oppose.
- Sheridan alleged that Rintala “repeatedly lost documents, including twice [Sheridan’s] accountant’s breakdown of her production expenses.” Again, Sheridan alleges no facts showing that any documents Rintala lost were not or could not have been reproduced by the time of trial, or how the lost documents were causally related to the adverse jury verdict.
- Finally, Sheridan alleged:

“[Rintala] failed to file a Cross-Complaint against LaBow and her father, Ron LaBow, who was not judgment-proof. Even if LaBow was judgment proof, the cross complaint would have put [Sheridan] in a better bargaining position and would have forced the determination of many critical issues and it could have prevented the issuance of the Jury Verdict award for \$100,000 in favor of LaBow.”

Sheridan did not allege any ground upon which a cross-complaint against Ron LaBow would be based, merely repeating her previous allegation that the refusal to file a cross-complaint against LaBow herself “for involving [Sheridan] in a baseless and frivolous lawsuit” was “apparently . . . part of [Rintala’s] plan to weaken [Sheridan’s] defense of the LaBow claim.”<sup>5</sup> In short, again no facts are pleaded showing any basis for a cause of action against Ron LaBow, or showing how the lack of a cross-complaint against him resulted in the jury verdict against Sheridan. (Cf. *Thompson v. Halvonik* (1995) 36 Cal.App.4th 657, 661 [“[u]nless a party suffers damage . . . as a consequence of his attorney’s negligence, he cannot establish a cause of action for malpractice”; “[b]reach of duty causing only speculative harm is insufficient to create such a cause of action”].)

Sheridan cites authority for the propositions that negligence may be alleged in general terms; it is sufficient to allege “that an act was negligently done by defendant and that it caused damage to plaintiff”; and that these general principles apply to pleading a cause of action for legal malpractice. (*Modica v. Crist* (1954) 129 Cal.App.2d 144, 146.) These statements in *Modica v. Crist* do not assist Sheridan, because the case cannot be read to relieve the plaintiff of the obligation to plead *facts* showing a proximate causal connection between the negligent conduct and the resulting injury. *Modica* held that the complaint adequately pleaded all the essential facts constituting a cause of action for legal malpractice, and specifically that it contained “a sufficient averment of facts necessary to meet the requirement of proximate cause.”<sup>6</sup> (*Ibid.*) *Modica* rejected the

---

<sup>5</sup> Sheridan’s allegation continued: “[Sheridan] is informed and believes that this conduct [refusal to file a cross-complaint] suggests that [Rintala] changed sides and [was] secretly working for LaBow which fact was not disclosed to [Sheridan]. Said change of position was legal malpractice and unethical.”

<sup>6</sup> In *Modica v. Crist*, the complaint alleged the lawyer was engaged to represent the plaintiff in purchasing a half interest in a restaurant; the lawyer advised the plaintiff it was unnecessary to comply with certain provisions of the Civil Code by recording and



defendants' contention that a complaint for legal malpractice had to allege facts showing "that any loss was *caused solely* by the attorney's negligence and must *negative any other probable cause* for the loss." (*Id.* at p. 147 ["but for" formulation "is merely one way of expressing the requirement that negligence to be actionable must be *a proximate cause* of the injury"].) Indeed, *Modica* cites *Feldesman v. McGovern* (1941) 44 Cal.App.2d 566, and states that *Feldesman* "held merely that when a cause of action is predicated upon an attorney's negligent failure to perform some act in behalf of the client, the complaint must state facts showing that if the attorney had acted it would have resulted beneficially to the client." (*Modica v. Crist, supra*, 129 Cal.App.2d at p. 148; see *Feldesman v. McGovern, supra*, 44 Cal.App.2d at pp. 568-569, 571 ["facts necessary to a cause of action but not alleged must be taken as having no existence"].) Sheridan's second amended complaint does not state facts showing that the "acts of willful malpractice" she alleges were a proximate cause of the adverse verdict in the LaBow suit, and the trial court did not err in sustaining Rintala's demurrer.

Nor was there error in the trial court's refusal to permit further amendment of the complaint. A trial court abuses its discretion in sustaining a demurrer without leave to amend if there is a reasonable probability that the complaint could be amended to state a cause of action. However, it is the plaintiff's burden to demonstrate an abuse of discretion, so Sheridan must show "in what manner [she] can amend [her] complaint and how that amendment will change the legal effect of [her] pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) In her appellate brief, Sheridan contends she should have received an opportunity "to specifically allege the absent evidence and unexplored issues that she contends damaged her defense," and "to specify the nature of

---

publishing notices or in escrowing the purchase price; plaintiff relied on the advice and did not comply with the Code, instead paying the seller directly; and but for the lawyer's negligence, plaintiff would have been timely apprised of the seller's outstanding indebtedness and could have repudiated the agreement of sale, avoiding losses that included the \$4,000 payment and other partnership debts subsequently paid by plaintiff. (*Modica v. Crist, supra*, 129 Cal.App.2d at p. 145 & fn. \*.)

her proposed counterclaim against Mr. LaBow and his daughter,” which “would have been based on claims such as promissory estoppel or fraud based on their continual failure to honor agreements.” But Sheridan does not tell us what “the absent evidence and unexplored issues” are; nor does she suggest what facts she can allege to show a “promissory estoppel or fraud” claim against LaBow’s father or to show how such a claim could have affected the verdict in the LaBow lawsuit. Consequently, Sheridan has not met her burden to show an abuse of discretion in the trial court’s ruling sustaining Rintala’s demurrer without leave to amend.

### **DISPOSITION**

The judgment (order of dismissal) is affirmed. The respondents are to recover their costs on appeal.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

COOPER, P. J.

We concur:

FLIER, J.

BIGELOW, J.